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No. 08-1176

In the Supreme Court of the United States

TYSON FORD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner was "seized" within the meaning of the Fourth Amendment when, after petitioner voluntarily gave police officers his driver's license, the officers retained the license as they spoke to petitioner while he was standing on a public street.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 548 F.3d 1. The opinion of the district court (Pet. App. 16a-34a) is reported at 440 F. Supp. 2d 16.

JURISDICTION

The judgment of the court of appeals was entered on November 5, 2008. On December 22, 2008, Justice Souter extended the time within which to file a petition for a writ of certiorari to and including March 20, 2009, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a conditional guilty plea in the United States District Court for the District of Massachusetts, peti-

tioner was convicted of possessing a firearm after having been convicted of a felony, in violation of 18 U.S.C. 922(g)(1). He was sentenced to 15 years of imprisonment, to be followed by three years of supervised release. The court of appeals affirmed. Pet. App. 1a-15a.

1. In September 2005, two Boston police officers, Daran Edwards and Daniel Griffin, were on patrol in a high-crime area of Dorchester, Massachusetts. The officers, who were in uniform and in a marked police cruiser, regularly patrolled the area and were familiar with many of the neighborhood's residents. Pet. App. 2a, 17a-18a.

Around 3 p.m., the officers saw petitioner, whom they did not recognize, walking alone down Harvard Street. The officers saw petitioner look over his shoulder in the direction of the cruiser. Petitioner then lowered his head, began walking rapidly, and turned onto Gleason Street. Without activating the cruiser's siren or flashing lights, the officers followed petitioner, turning the wrong way onto the one-way Gleason Street. Pet. App. 2a, 18a, 20a.

When the cruiser came abreast of petitioner, the officers pulled over to the curb but did not block petitioner's path. Officer Griffin leaned out the passenger side window and said: "Can I speak to you for a minute?" Pet. App. 2a, 19a. Petitioner stopped walking. Without a request from the officers, he took his driver's license out of his pocket, handed it to Officer Griffin, and volunteered that he had no outstanding warrants and was not on probation.[1] While Officer Edwards used petitioner's

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[1] Petitioner's statement of the case (Pet. 2-4) rests, in part, on his own testimony at the suppression hearing that was not credited by the district court. For example, petitioner testified on direct examination that the officer called out to him, "[H]ey James, where you been?" and

driver's license to run a computer search for warrants, Officer Griffin asked petitioner what the district court described as "various routine questions," including "[w]here do you live?" and "[w]here are you headed?" *Id.* at 19a (brackets in original). Although petitioner answered all of these questions, the officers observed that he was stuttering and breathing rapidly, that his hands were shaking, and that he seemed annoyed and hostile. *Id.* at 3a, 19a.

About 45 seconds after being handed petitioner's identification, both officers got out of the cruiser and approached petitioner from the same direction. Neither officer unholstered his weapon. Petitioner began shaking more severely, raised his hands in the air, and asked: "Come on man, what's this all about?" Pet. App. 3a, 20a. Officer Griffin asked petitioner if he had any weapons, and petitioner said: "Yeah, I got a gun in my pocket, but it don't fire."[2] *Ibid.* The officers placed petitioner in handcuffs, frisked him, and found a semiautomatic handgun in a pants pocket. The entire encounter lasted between two and three minutes. At no point did either officer tell petitioner that he was not free to leave. *Id.* at 3a, 20a.

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that he gave the officer his identification to show that he was not "James." Pet. App. 45a. The district court, however, credited the police officers' account, rather than petitioner's, in its factual findings. See *id.* at 18a-19a

[2] At the suppression hearing, petitioner claimed that he asked the officers to return his identification when they got out of the cruiser. Pet. App. 47a-48a; 4/25/06 Tr. 96-97, and he denied telling the officers that he had a gun in his pocket, *id.* at 98. Petitioner also claimed that the officers grabbed him after he refused their request to consent to a frisk. *Id.* at 92, 97-98. As noted earlier, however, the district court credited the police officers' version of events in its factual findings. See Pet. App. 19a-20a.

2. The district court denied petitioner's motion to suppress the firearm. Pet. App. 16a-34a. The court concluded that the "initial interaction" between petitioner and the officers—that is, the period before the officers got out of the cruiser—"did not rise to the level of a Fourth Amendment seizure." *Id.* at 29a. The court stated that "[t]he most important factor[s]" supporting its conclusion were that petitioner "voluntarily stopped walking and voluntarily produced his identification." *Ibid.*

The district court also held that the officers had not "seized" petitioner during the period after the officers got out of the cruiser but before petitioner admitted that he was armed. Pet. App. 29a-33a. The court found that portion of the encounter had "none of the objective factors that traditionally raise police encounters to the level of a seizure," and it noted that the officers did not touch petitioner, physically block petitioner's ability to walk away, or draw their weapons. *Id.* at 30a. The court acknowledged that the officers still had petitioner's identification at that point, and "that the retention of a suspect's identification is one factor that weighs in favor of finding a seizure." *Ibid.* But the district court concluded that "[t]he most important fact" in this case was that petitioner "voluntarily gave the officers his identification without any request by the officers," and it also determined that "the encounter happened so quickly that [the officers] never had an opportunity to return [petitioner's] identification to him." *Id.* at 32a; see *ibid.* (explaining that the officers had retained petitioner's identification for purposes of running a computer check and that the check had not yet been completed when the officers got out of the car). Under those circumstances, the district court determined that "[t]he retention of [pe-

titioner's] identification" did "not convert this otherwise consensual encounter into a Fourth Amendment seizure." *Ibid.*

3. The court of appeals affirmed. Pet. App. 1a-15a. Applying the test established in *United States* v. *Mendenhall*, 446 U.S. 544 (1980) (plurality opinion), and applied by this Court in later cases, the court of appeals held that petitioner was not seized until after "he disclosed that he was in possession of a firearm." Pet. App. 10a. The court noted that the officers "drove a short distance the wrong way on Gleason Street for the purpose of asking [petitioner] questions but activated neither the cruiser's siren or flashing lights." *Id.* at 11a. The court stated that the officers' questions were "largely general and non-threatening" and that the officers did not draw their guns or touch petitioner until he admitted having a gun. *Ibid.* The court also observed that "[w]hile the [o]fficers retained [petitioner's] license during the two- to three-minute exchange, they did not otherwise restrict [petitioner's] movement." *Ibid.*

The court of appeals distinguished this case from *Florida* v. *Royer*, 460 U.S. 491, 501-502 (1983), where this Court held that a suspect had been seized at an airport when two detectives retained his driver's license and airplane ticket while directing him to accompany them to a private room. Pet. App. 11a-12a. The court of appeals concluded that "the concerns of the airport cases, where citizens need documentation to move from place to place, differ from" those that arise in a case, like this one, where a defendant "was on foot on a public street." *Id.* at 12a. The court also emphasized that petitioner "produced his license voluntarily, not at the request of one of the [o]fficers, and was not removed from the street to a confined space while the [o]fficers ran the

background check." *Ibid.* The court of appeals stated that "the retention of [petitioner's] license [wa]s an important factor in [its] analysis," but the court "decline[d] to elevate it above other considerations." *Ibid.* "Evaluating the totality of circumstances," the court of appeals thus held "that [petitioner] was not seized for purposes of the Fourth Amendment protections when he told the [o]fficers he possessed a handgun." *Id.* at 13a.

ARGUMENT

Petitioner contends (Pet. 9-35) that he was seized for Fourth Amendment purposes when the officers got out of their car without returning his identification or telling him that he was free to leave. The court of appeals correctly rejected that contention, and further review is unwarranted.

1. a. "Law enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen." *United States* v. *Drayton*, 536 U.S. 194, 200 (2002). In particular, "interrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure." *INS* v. *Delgado*, 466 U.S. 210, 216 (1984); accord *Hiibel* v. *Sixth Judicial Dist. Ct.*, 542 U.S. 177, 185 (2004); *Florida* v. *Bostick*, 501 U.S. 429, 434-435 (1991). Rather, "[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry* v. *Ohio*, 392 U.S. 1, 19 n.16 (1968).

Where an officer's actions do not show "an unambiguous intent to restrain or when an individual's submis-

sion to a show of governmental authority takes the form of passive acquiescence," the appropriate inquiry is "whether 'a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.'" *Brendlin* v. *California*, 127 S. Ct. 2400, 2405-2406 (2007) (quoting *Bostick*, 501 U.S. at 436); see *Drayton*, 536 U.S. at 201-202. Relevant circumstances include whether the officers displayed weapons, physically touched a citizen, gave any commands or conveyed any type of threat, or used language or a tone of voice that indicated that compliance was required, as well as the location of the encounter, the number of officers, the officers' proximity to the citizen, and the timing of the officers' arrival. See *Bostick*, 501 U.S. at 432, 437; *United States* v. *Mendenhall*, 446 U.S. 544, 554 (1980) (plurality opinion). The reasonable person test "is objective and 'presupposes an *innocent* person.'" *Drayton*, 536 U.S. at 202 (quoting *Bostick*, 501 U.S. at 438).

b. The court of appeals correctly held that, under the circumstances of this case, petitioner was not seized until after he told the officers that he had a gun. Pet. App. 9a-14a. The officers did not activate their cruiser's lights or siren or otherwise order petitioner to stop. Instead, Officer Griffin said: "Can I speak to you for a minute?" *Id.* at 2a, 19a. Without being asked, petitioner voluntarily produced his identification and claimed that he had no outstanding warrants and was not on probation. *Id.* at 2a-3a, 19a. The officers then used petitioner's identification for a brief period in order to run a computer check to verify petitioner's statements. The use of the identification volunteered by petitioner, presumably to permit the officers to verify his identity, would not have communicated to a reasonable person in petitioner's position that the encounter was no longer

consensual. When the two officers got out of the cruiser, they did not tell petitioner that he was under arrest, unholster their weapons, or attempt to restrict petitioner's movements. *Id.* at 20a. Instead, they asked petitioner if he had any weapons. *Ibid.* Because the officers did not employ "physical force" or make a "show of authority" that would have communicated to a reasonable person in petitioner's position that he was not free to decline the officers' requests and terminate the encounter, *Bostick*, 501 U.S. at 434 (quoting *Terry*, 392 U.S. 19 n.16), no Fourth Amendment seizure occurred until after petitioner admitted that he had a firearm.

2. a. The court of appeals' decision in this case does not conflict with *Florida* v. *Royer*, 460 U.S. 491 (1983). As the court of appeals correctly explained (Pet. App. 12a), *Royer* is distinguishable for at least two reasons. First, in *Royer*, the officers retained both the passenger's ticket and his driver's license in an airport, which is a place "where citizens need documentation to move from place to place." *Ibid.* Here, petitioner "was on foot on a public street." *Ibid.* Second, after the suspect in *Royer* produced his identification, and before his identification was returned, the suspect was informed that the officers suspected that he was transporting narcotics and he was asked to accompany the officers to a private room that was located 40 feet away. *Royer*, 460 U.S. at 494 (plurality opinion). Here, petitioner "produced his license voluntarily, not at the request of one of the [o]fficers, and was not removed from the street to a confined space while the [o]fficers ran the background check." Pet. App. 12a.

b. Petitioner asserts that *Royer* "established" a broad rule "that a consensual encounter between the police and an individual escalates into a Fourth Amend-

ment 'seizure' when the police *retain* the individual's identification beyond the time necessary to conduct an initial inquiry into the person's identity, using that retention as leverage to conduct or continue an investigation." Pet. 8. Based on that reading of *Royer*, petitioner advocates a "categorical rule" that "police questioning during the retention of personal identification, coupled with the failure to inform the individual that [he] remain[s] free to leave, transform[s] [an] initially voluntary encounter into a seizure." Pet. 29; see Pet. 31. That argument is without merit.

First, petitioner's argument is based on a single sentence from Justice White's plurality opinion in *Royer* that rejected the State's argument that "the entire encounter [in that case] was consensual." 460 U.S. at 501 (plurality opinion). Petitioner is correct that, in that sentence, Justice White cited the fact that the officers had "retain[ed] [the defendant's] ticket and driver's license" and had not "indicat[ed] in any way that he was free to depart." *Ibid.* But that very same sentence also notes that "[a]sking for and *examining* Royer's ticket and driver's license were no doubt permissible in themselves," *ibid.* (emphasis added); it was only when the officers retained those items, "identified themselves as narcotics agents, told Royer that he was suspected of transporting narcotics, and asked him to accompany them to the police room" that the encounter became non-consensual. *Ibid.* Because the plurality opinion in *Royer* found that Royer had been seized based on a variety of factors, it neither establishes nor supports the establishment of a "categorical rule" (Pet. 29) that would place "primacy upon retention of a person's identification" (Pet. 30).

Second, the "categorical rule" (Pet. 29) that petitioner proposes would be inconsistent with this Court's other cases. This Court has stated that "for the most part *per se* rules are inappropriate in the Fourth Amendment context." *Drayton*, 536 U.S. at 201; accord *Bostick*, 501 U.S. at 439-440 (rejecting *per se* rule that all police-citizen encounters inside a bus constitute "seizures" for purposes of the Fourth Amendment); see *Ohio* v. *Robinette*, 519 U.S. 33, 39-40 (1996) (rejecting *per se* rule that police officers must tell motorists stopped for traffic violation that they are free to go before they may obtain valid consent to search the vehicle). The Court also has emphasized repeatedly that the determination of whether a seizure has occurred must be based on "all of the circumstances" of an encounter. *Brendlin*, 127 S. Ct. at 2405 (quoting *Mendenhall*, 446 U.S. at 554);[3] see *Drayton*, 536 U.S. at 201; *Bostick*, 501 U.S. at 439; *California* v. *Hodari D.*, 499 U.S. 621, 627-628 (1991); *Delgado*, 466 U.S. at 215. As the Court explained in *Michigan* v. *Chesternut*, 486 U.S. 567, 573 (1988), the test for whether a seizure has occurred is "necessarily imprecise, because it is designed to assess the coercive effect of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation."[4]

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[3] In *Brendlin*, this Court held that a passenger is "seized" within the meaning of the Fourth Amendment whenever a car in which he is riding is pulled over by the police. But the Court reached that conclusion only after applying the *Mendenhall* test and concluding that "any reasonable passenger" would understand that, once a car is stopped, "no one in the car [is] free to depart without police permission." 127 S. Ct. at 2406-2407.

[4] Petitioner quotes (Pet. 32-33) language from *Chesternut* stating that the test for determining whether a seizure has occurred "calls for consistent application from one police encounter to the next." 486 U.S.

3. Petitioner asserts (Pet. 9-22) that the lower courts are divided over whether a person is seized whenever a law enforcement officer retains his identification beyond the time necessary to conduct an initial inquiry into his identity and then engages in "investigatory questioning" or "fail[s] to disclose that the individual is free to leave." Pet. 8. It is true that, in distinguishing consensual encounters from seizures, many courts of appeals have considered an officer's retention of a person's identification to be a significant factor. But the court of appeals likewise treated the officer's retention of petitioner's identification as a significant, though not dispositive, factor. See Pet. App. 12a (describing "the retention of [petitioner's] license" as "an important factor in our analysis"). In addition, none of the cases upon which petitioner relies involved an individual who voluntarily gave his identification to officers without being asked, and both the district court (*id.* at 29a, 32a) and the court of appeals (*id.* at 12a) described the fact that petitioner did so as highly significant to their analysis. Thus, the cases on which petitioner relies are all distinguishable based on their different facts. Far from demonstrating a conflict in the circuits, the cases demonstrate that each case turns on its own facts, which accords with the Court's general approach to Fourth Amendment cases.

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at 574. But the full sentence makes clear that what the Court was rejecting was a *subjective* standard that would make whether a seizure has occurred depend on "the particular individual's response to the actions of the police." *Ibid.* As the Court explained in the next sentence of its opinion, it is "[t]he [*Mendenhall*'s] test's objective" character that "allows the police to determine in advance whether the conduct contemplated will implicate the Fourth Amendment." *Ibid.*

For example, in *United States* v. *Jordan*, 958 F.2d 1085 (D.C. Cir. 1992) (see Pet. 10-11), which predated this Court's decision in *Drayton*, a police officer approached the defendant and asked for his bus ticket and identification as he was getting into his car to leave the bus terminal. *Jordan*, 958 F.2d at 1086. As petitioner acknowledges (Pet. 10-11), the D.C. Circuit specifically noted that the case before it, like previous cases, involved a situation where a person who had been "stopped by the police" was "*asked to hand over* critical identification or travel documents." *Jordan*, 958 F.2d at 1087 (emphasis added); see *ibid.* ("The police *asked for*, took, and *retained* Jordan's driver's license while they continued questioning him.") (first emphasis added). The D.C. Circuit also emphasized that, in determining "whether a reasonable person would feel free to 'disregard the police and go about his business,'" it is "crucial to focus on what the person's immediate 'business' is," and it reasoned that, for an individual who "was intent on getting into a waiting car at six o'clock at night in order to leave the scene altogether," the officer's retention of the defendant's driver's license was highly significant. *Id.* at 1088 (citation omitted). Here, in contrast, the court of appeals specifically relied on the fact that petitioner "produced his license voluntarily, not at the request of one of the [o]fficers," Pet. App. 12a, and petitioner was walking along a public street when the officers approached him.

Nor has the Tenth Circuit adopted (see Pet. 11-13) a categorical rule that a Fourth Amendment seizure occurs whenever an officer engages in unrelated investigatory questioning while still in possession of an individual's identification. In *United States* v. *Lopez*, 443 F.3d 1280, 1282 (10th Cir. 2006), a police officer approached

Lopez and another man while they were standing next to a parked car whose engine was running. Lopez claimed that the car belonged to him, at which point the officer "asked [the men] for identification." *Ibid.* Although the officer quickly determined that the address on Lopez's driver's license matched the address of the car's registered owner, the officer "took Lopez's license to his patrol car and ran a warrants check" and "told the men to wait by the rear of the parked car." *Ibid.* (quoting district court decision). Examining the totality of the circumstances, *id.* at 1284, the court concluded that Lopez was "seized" when the officer took the driver's license back to his patrol car to check for outstanding warrants, because the officer's actions had "render[ed] Lopez unable to leave." *Id.* at 1286. Like *Jordan*, *Lopez* did not involve a person who voluntarily handed his identification to the police. Nor did anything occur in this case similar to the statement by the officer in *Lopez*, who "specifically instructed Lopez to remain by his vehicle." *Ibid.*

For similar reasons, the Tenth Circuit's decision in *United States* v. *Lambert*, 46 F.3d 1064 (1995), which was decided before this Court's decision in *Drayton*, is also inapposite. In that case, two officers approached the defendant as he was "preparing to open the door to his car and drive away" after leaving an airport. *Id.* at 1068. The officers identified themselves as DEA agents, told the defendant that "they wanted to speak with him," and then, in sequence, asked for and obtained the defendant's airline ticket and his driver's license. *Id.* at 1066. The officers then retained the defendant's driver's license for a period of "twenty to twenty-five minutes." *Ibid.* The Tenth Circuit concluded that the defendant was "seized" when the officer failed to return the li-

cense, and it specifically noted that the defendant "could not lawfully leave the parking lot in his car without his driver's license." *Id.* at 1068. That is quite different from the brief retention of petitioner's license that he volunteered to the officers as they conversed on the street.[5]

The Fifth Circuit's decision in *United States* v. *Chavez-Villarreal*, 3 F.3d 124 (1993) (see Pet. 14), which was decided before *Drayton* and *Robinette*, is also of no help to petitioner. As petitioner acknowledges (Pet. 14), *Chavez-Villarreal* involved "a non-consensual encounter arising out of a traffic stop." During the stop, the defendant consented to a search of his car. Because the court concluded that the stop was illegal, the question was whether the defendant's consent sufficiently "dissipate[d] the taint of" the initial violation. *Chavez-Villarreal*, 3 F.3d at 127. In finding that it did not, the court relied on the short amount of time between the seizure and the request for consent, as well as the absence of intervening circumstances. The court also stated that the officer's "retention of the [defendants'] green cards" reinforced the officer's continued authority over them and limited the extent to which the taint of the initial seizure dissipated. *Id.* at 128; see 8 U.S.C.

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[5] The state cases upon which petitioner relies (Pet. 22-26) are similarly distinguishable. Most of those cases involve encounters with people in or around parked vehicles where police officers specifically asked the people for, and then retained, their driver's licenses. See *Finger* v. *State*, 799 N.E.2d 528, 530-531 (Ind. 2003); *State* v. *Daniel*, 12 S.W.3d 420, 423 (Tenn. 2000); *Rogers* v. *State*, 426 S.E.2d 209, 210-211 (Ga. App. 1992). The other state case on which petitioner relies, *Piggott* v. *Commonwealth*, 537 S.E.2d 618, 619 (Va. App. 2000), is not a decision of the state's highest court and it involved a passenger of a stopped vehicle who had himself been asked by the police to hand over his identification.

1304(e) (requiring every alien who is more than 18 years old to "carry" his alien registration card "with him" and have it "in his personal possession" at "all times").

There is a basic difference between cases like *Chavez-Villareal* and this one. In those cases, the question is not whether a seizure has occurred; it is whether, notwithstanding seizure, the circumstances demonstrate that a defendant's consent was voluntarily given. Cf. *United States* v. *Gonzalez-Lerma*, 14 F.3d 1479, 1483 (10th Cir.) ("This Circuit follows the bright-line rule that an encounter *initiated by a traffic stop* may not be deemed consensual unless the driver's documents have been returned to him.") (emphasis added), cert. denied, 511 U.S. 1095 (1994). Here, in contrast, the question is not whether the taint of an unlawful seizure had sufficiently dissipated but rather whether there was ever a "seizure" in the first place. For the same reason, the Tenth Circuit's observation in *Lambert* (see Pet. 13) that it "has consistently held that the undue retention of an individual's driver's license *during a traffic stop* renders the encounter nonconsensual," 46 F.3d at 1068 (emphasis added), is of no help to petitioner.

Petitioner also asserts (Pet. 19) that the Seventh and Eleventh Circuits "have previously adopted the bright-line rule advanced by petitioner[]" here but "have also departed from that rule in recent cases." An intracircuit conflict would not warrant this Court's review. *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam). In addition, the decisions upon which petitioner relies—*United States* v. *Cordell*, 723 F.2d 1283 (7th Cir. 1983), cert. denied, 465 U.S. 1029 (1984) (see Pet. 19-20), and *United States* v. *Thompson*, 712 F.2d 1356 (11th Cir. 1983) (see Pet. 21-22)—both predated this Court's decisions in *Bostick* and *Drayton*.

At any rate, there is no conflict between the court of appeals' decision in this case and *Cordell* or *Thompson*. Like *Royer*, *Cordell* involved an encounter in an airport. Two officers followed the defendant after he got off a flight, approached him in an area that connected the terminal to a parking garage, and asked him for his ticket and identification. *Cordell*, 723 F.2d at 1284. After the defendant handed one officer his driver's license and ticket, the officer handed them to the other officer, told the defendant they were conducting a narcotics investigation, and asked him whether he was carrying narcotics. *Ibid.* Without explaining its analysis, the Seventh Circuit concluded in a single sentence that, "when [the first officer] handed [the defendant's] driver's license and airline ticket to [the second officer], and told [the defendant] they were conducting a narcotics investigation, the encounter had become a detention." *Id.* at 1285. *Cordell* did not purport to establish any "categorical rule" (Pet. 29) about when a seizure occurs; it simply held that the combination of circumstances at issue in that case amounted to a seizure. See *United States* v. *Goodwin*, 449 F.3d 766, 768 (7th Cir. 2006) (holding that no seizure occurred during an interval between when officers retained the defendant's identification and ticket for a departing train and the defendant's incriminating statement because the interval "was too brief to amount to a seizure").

The Eleventh Circuit's decisions are similar. In *Thompson*, an officer approached a person who was sitting in a car that had been parked in an airport's short-term parking lot for two weeks. 712 F.2d at 1358. As the officer approached, he saw the person hold a light-colored circular object to his nose, place it in his lap, and then move the object to his side when he saw the

officer. The officer "knocked on the window [of the car] and asked [the defendant] for identification," which the defendant provided and which appeared valid. *Ibid.* The officer then asked the defendant to hand the officer the object that he had placed beside him. *Ibid.* The Eleventh Circuit held that the defendant was seized at the moment the officer requested the object. Although the court stated that "[w]hen [the officer] retained [the defendant's] license, the encounter matured into an investigative stop protected by the Fourth Amendment," *id.* at 1359, it did not purport to hold that an individual is seized *whenever* a police officer is holding his identification. Instead, the Eleventh Circuit concluded that "[a] reasonable person in *these* circumstances would not have believed himself free to leave," and it specifically noted that if the defendant "had tried to drive away he could have been arrested for driving without a license." *Ibid.* (emphasis added); accord *United States* v. *De La Rosa*, 922 F.2d 675, 678 & n.2 (11th Cir. 1991) (distinguishing *Thompson* and holding that no seizure occurred where an officer retained the license of a person who had parked his vehicle and started walking to his apartment). As a result, there is no conflict between the court of appeals' decision in this case and *Thompson*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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